



Department of Justice

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FIRST CIRCUIT COURT OF APPEALS REVERSES LOWER COURT'S DECISION TO DISMISS INDICTMENT IN FAX PAPER ANTITRUST CASE

Decision Confirms that U.S. Antitrust Laws Apply to Foreign Conduct that Harms U.S. Consumers

Joel I. Klein, Acting Assistant Attorney General in charge of the Department's Antitrust Division made the following statement today regarding the First Circuit Court of Appeals' decision yesterday in the Nippon Paper Industries Co. Ltd. case:

We are extremely gratified by the court's decision. This case is very important to the Antitrust Division's enforcement effort against international cartels that harm U.S. consumers. We need to be able to reach such cartels no matter where the cartel activity takes place. Otherwise, when companies that are members of a cartel sell products to the United States, we cannot fully protect American consumers against artificially inflated prices. The court's decision is based squarely on controlling Supreme Court precedent regarding the geographic reach of the Sherman Act.

As the Court of Appeals explained, "[w]e live in an age of international commerce, where decisions reached in one corner of the world can reverberate around the globe in less time than it takes to tell the tale. Thus, a ruling in [Nippon Paper Industries's] favor would create perverse incentives for those who would use nefarious means to influence markets in the United States, rewarding them for erecting as many territorial firewalls as possible between cause and effect."

The court also said, "[The] Hartford Fire [decision] definitely establishes that Section One of the Sherman Act applies to wholly foreign conduct which has an intended and substantial effect in the United States....Under settled principles of statutory construction, we also are bound to apply it by interpreting Section One the same way in a criminal case."

The court's decision reinstates the indictment against Nippon Paper Industries Co. Ltd. and remands the case to the District Court for further proceedings. In December 1995, a grand jury indicted Nippon Paper and others for conspiring with competitors in Japan to fix fax paper prices expressly for the purpose of raising prices to American consumers.

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